APPENDIX.

Affidavit of Lewis F. Jacobson in Support of Alternative Motion to Withhold Final Ruling Pending Proceedings, Etc.

UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
COUNTY OF COOK. } ss:

LEWIS F. JACOBSON, being first duly sworn, upon oath, deposes and says as follows:

1. He is an attorney at law, duly licensed to practice in this Court and in the State of Illinois, and is one of the attorneys for plaintiffs in the suits described in the foregoing petition for rehearing and motion, and he is the duly authorized agent of plaintiffs.

2. Affiant further states that he actively participated as one of the attorneys for plaintiffs in the suits brought by the debenture holders and note holders against the Chicago and New York banks, arising out of the affairs of Insull Utility Investments, Inc. and Corporation Securities Company, and that he personally participated in the settlement negotiations with said banks and joined with others in negotiating and consummating such settlement.

3. The settlement agreement with said banks was not personally negotiated by plaintiffs or the members of the class they represent, but the negotiations which resulted in the bank settlement agreement were conducted by persons other than debenture and note holders individually (who lived throughout the United States) and affiant was one of such persons who negotiated the settlement agreement and participated in the consummation thereof, all as shown in greater detail in plaintiffs' verified an-

swers on facts filed below (Aiken R. 224, 233-9, 265-7; De Met's R. 233-245, 248-250), which answers on facts were admitted to be true by defendants' counsel. (Aiken, R. 289.)

4. Sub-paragraph (K) of Paragraph 26 of the Petition filed by the debenture and note holders in the bank suits, was drawn by the representatives of debenture and note holders and the banks for the purpose of preserving the cause of action by debenture and note holders against the directors. (Aiken R. 143, 166; De Met's R. 131.)

5. In view of the fact that in 1940 Judge Briggle, District Judge at that time in these suits against the directors, construed the decree entered by Judge Wilkerson in approving the bank settlement and the papers supplemental thereto to be an effective release of the respondent directors, which construction is exactly contrary to the intent, meaning and understanding of the debenture and note holders and the banks who were parties to such settlement, and their own construction of the settlement agreement and their performance under it, the debenture and note holders will promptly proceed by appropriate motions to seek to amend the decrees entered by Judge Wilkerson in the bank settlement cases and to amend any other orders entered by said Court so as to have such decrees in the bank cases more correctly express the terms of the agreements made by the parties, and more clearly indicate that such decrees and orders were intended to be given the effect *only* of covenants not to sue, and under no circumstances to release or have the effect to release any party liable to the debenture holders.

Affiant further saith not.

LEWIS F. JACOBSON.

Subscribed and sworn to before me this 11th day of March, 1942.

NORMAN M. MERTES,
Notary Public.